IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1492 OF 1988.

Chhananlal Surajmal Kering ...Appellant
Vs.
The Special Land Acquisition
Officer No.1, Pune ...Respondent

Mr. K.Y.Mandlik for the Appellant
None for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 13,2006.

ORAL JUDGMENT:

1. The present Appeal is preferred by the original claimant who filed a Reference Application under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894).

2. The land bearing City Survey No.10 of Village Parvati, District Pune was notified for acquisition by virtue of a notification under Section 4 of the said Act of 1894. The notification was published on 31st January 1974. There is no dispute between the parties that the area of acquired land is 317.73 sq. meters. The Award under Section 11 of the said Act of 1894 was declared on 12th May 1981. By the said Award, compensation calculated on the basis of market value at Rs.11/- per sq.meter was offered to the Appellant. The Appellant did not accept the Award and made an Application under Section 18 of the said Act of 1894. In the Reference Application under Section 18 of the said Act of 1894, the prayer of the Appellant was for grant of compensation by taking the market value at Rs.129.12 per sq.meter. The

Reference Court by the impugned Judgment and Award dated 11th February 1988 came to the conclusion that the market value of the acquired land on the date of notification was Rs.22/- per sq.meter.

2. Shri Mandalik for the Appellant invited my attention to the Judgment and Order dated 1st December 2003 passed by this Court in the First Appeal No.71 of 1989 along with First Appeal No.155 of 1989. He pointed out that the said decision of this Court was rendered in Cross Appeals preferred by the claimants and the State Government in respect of the land bearing city survey No.11 and 12 at Parvati, Pune. He pointed out that the land bearing City survey No.10 which is the subject matter of the present Appeal and the said lands subject matter of the aforesaid Appeals were notified for acquisition by the same notification under Section 4 of the said Act of 1894. He pointed out that in respect of the said adjoining lands this Court came to the conclusion that the claimants were entitled to market value at the rate of Rs.35/- per sq.meter. Shri Mandalik submitted that the land subject matter of the said decision is comparable in all respects with the land which is subject matter of the present Appeal. He therefore submitted that this Appeal may be decided in terms of the order passed by this Court on 1st December 2003.

3. Shri Tated, A.G.P. for State did not dispute the fact that the land which is subject matter of the present Appeal

is comparable with land subject matter of First Appeal No.71 and 155 of 1989 and therefore the rate awarded by this Court in respect of the said other land will also apply to the land subject matter of this Appeal. Shri Tated, however, pointed out that as the Award under Section 11 of the Land Acquisition Act, 1894 was made prior to date on which the Land Acquisition (Amendment) Act, 1984 came into force, the Appellant will not be entitled to benefits of amended Section 23 (1-A) of the said Act of 1894. He fairly submitted that the Appellant will be entitled to benefit under Section 28 as amended by the said Act of 1894.

4. In view of the submissions made before me, the Appellant will be entitled to the compensation by taking the market value at the rate of Rs.35/- per sq.meter. As the Award under Section 11 was made on 12th May 1981, the Appellant will not get benefit of the amended provisions of 23(1-A).

5. In view of the provisions of Section 30 of the Land Acquisition (Amendment) Act, 1984, the Appellant will be entitled to the benefits as per amended Sections 23(2) and 28 of the said Act of 1894.

6. Appeal deserves to be partly allowed.

7. Hence, I pass the following order :

i) The Appellant is entitled to compensation by calculating market value of the acquired land at the rate of Rs.35/- per sq.meter.

ii) That part of the impugned order by which the Appellant was held entitled to the interest under Section 23 (1-A) of the said Act of 1894 is set aside and it is clarified that the Appellant will be entitled to solatium under Section 23(2) and interest under Section 28 of the said Act of 1894 as amended by Act No.68 of 1984.

iii) The Appellant will be entitled to proportionate costs through out.

iv) The reference Court will do the exercise of calculating the exact amount due and payable on the basis of this order within a period of four months from the date of receipt of writ of this order.

v) The impugned Judgment and Award passed by the reference Court stands modified accordingly.

Judge.